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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 9  
of the Communications ActAssessment and Collection of  
Regulatory Fees for the 1994  
Fiscal Year

MD Docket No. 94-19

REPLY COMMENTS OF THE  
 NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Reply Comments to Comments filed in this proceeding on April 7, 1994. NTCA is a national association of approximately 500 small and rural local exchange carriers ("LECs") providing telecommunications services to subscribers and interexchange carriers ("IXCs") throughout rural America. Many NTCA members provide cable service also.

DISCUSSION

In its prior comments, NTCA raised points related to the Commission's proposed procedures for handling regulatory fees for nonprofit such as NTCA's telephone cooperative members. NTCA urged the Commission to (1) accept as evidence of nonprofit status letters sent by cooperatives requesting Determination letters in cases where Determination letters are pending, and (2) enact rules that provide that cooperatives remain exempt from the fee requirements once they have been determined exempt under Commission rules, until a change in status has been determined.

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None of the comments are inconsistent with NTCA's recommendations.

NTCA's comments at this reply stage address small cable operator comments and the National Exchange Carrier Association's proposal to process the access line regulatory fee obligation for LECs participating in NECA pools.

NTCA supports NECA's proposal to process the access line regulatory fee obligation for LECs participating in NECA pools. NECA states that it would aggregate the payment amounts for member companies and remit a combined payment to the Commission. NECA believes its involvement would enhance efficiency by reducing the Commission's paperwork processing burden and relieving the LECs of new administrative duties. NECA proposes that the Commission use the Universal Service Fund ("USF") loop count specified in Section 36.611(a)(8) to assure that access line counts are calculated on a uniform basis. It recommends that the annual count applied to collect the regulatory fee coincide with the schedule for the USF loop count data collection.

Most NTCA members participate in one or both of the NECA pools and must already submit loop count data to NECA. These members like all NTCA members are small companies with few employees. NTCA supports NECA involvement because any reduction of regulatory burdens and procedural streamlining that can be applied to the fee collection process will contribute to the more

efficient operations by the companies and benefit the customers who rely on the companies for efficient service.

The Chief Counsel for Advocacy of the United States Small Business Administration ("SBA") and several organizations ("the small cable systems") representing small cable operators urge the Commission to assess regulatory fees for cable systems on a per subscriber basis instead of a per thousand basis as it proposes.<sup>1</sup> The small cable systems correctly point out that the legislative history evinces a Congressional intent that the regulatory fee for small systems be based on a per subscriber basis to prevent undue burdens and increasing obligations on systems and customers.

The legislative history that pertains to this issue is contained in House Conference Report No. 103-213 which incorporates by reference House Report 102-207.<sup>2</sup> House Report 102-207 stated:

The committee has been concerned about escalating rates for cable television service, and is mindful that the regulatory fee contained in H. R. 1674 [the 1991 predecessor of Section 9] could cause cable rates for small systems to increase substantially. In order to avoid this outcome, it is the Committee's intention that the fee be paid on the basis of 17.5 cents per subscriber per year. This will assure that small

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<sup>1</sup> See, Comments of The Cable Telecommunications Association at 1-4; the National Cable Television Association at 2-3; the Nationwide Communications, Inc. at 4; and the Small Cable Business Association at 6-7; all filed in this proceeding on April 7, 1994.

<sup>2</sup> H.R. REP. No. 103-213, 103rd Cong., 1st Sess. 499 (1993).

systems do not pay a disproportionate share of the amount collected by the Commission.<sup>3</sup>

The schedule of regulatory fees in H. R. 1674, like the schedule in the enacted Section 9 contained a one line with the following reference: "Cable Television System (per 1000 subscribers) (47 C.F.R. Part 76....[\$] 175."<sup>4</sup> The only difference between this one line and the one line in Section 9 is a change of the \$175 yearly amount to \$370.

NTCA believes the Commission should look to the 1991 House Report 102-207 as the appropriate guidance for interpreting what Congress intended. The one line in the "Schedule of Regulatory Fees" in enacted Section 9 was obviously not the place where Congress could or did explain how fees were to be calculated for individual systems. It chose to explain its intent in the section by section "Explanation of FCC User Fees." These are contained in the 1991 House Report and were specifically incorporated in the 1993 House Conference Report No. 103-213 that accompanied Section 6003 of the 1993 Budget Act, new Section 9 of the Communications Act. NTCA agrees that small system fees should be calculated on a per subscriber basis and urges the Commission to do so. Assessment of the fee on a per subscriber basis is also a fairer method than the per thousand basis which would have the harsh result of penalizing systems with subscriber increments of less than a thousand.

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<sup>3</sup> H.R. REP. No. 102-207, 102nd Cong., 1st Sess. 23-24 (1991).

<sup>4</sup> Id. at 4.

For the above stated reasons, the Commission should adopt rules that provide for the remedies NTCA supported in its initial comments and also (1) provide for NECA processing of the "per access line" fee for the LECs that participate in NECA pools, and (2) calculate small cable operator fees on a per subscriber basis.

NATIONAL TELEPHONE COOPERATIVE  
ASSOCIATION

By:   
David Cosson  
(202) 298-2326

By:   
L. Marie Guillory  
(202) 298-2359

Its Attorneys

2626 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037

April 18, 1994

**CERTIFICATE OF SERVICE**

I, Rita H. Bolden, certify that a copy of the foregoing  
Reply Comments of the National Telephone Cooperative Association  
in MD 94-19 was served on this 18th day of April 1994, by first-  
class, U.S. Mail, postage prepaid, to the following persons on  
the attached list:

Rita H. Bolden  
Rita H. Bolden

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W., Room 814-0101  
Washington, D.C. 20554

Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, N.W., Room 802-0106  
Washington, D.C. 20554

Commissioner Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, N.W., Room 826-0103  
Washington, D.C. 20554

Mr. Kent Nilsson, Chief  
Cost Analysis Branch, Accounting  
and Audits Division  
Common Carrier Bureau  
Federal Communications Commission  
2000 L Street, N.W., Room 812-1600E  
Washington, D.C. 20554

Downtown Copy Center  
1990 M Street, N.W.  
Suite 640  
Washington, D.C. 20036

International Transcription Service  
2100 M Street, N.W.  
Suite 140  
Washington, D.C. 20037

David E. Weisman, Esq.  
Alan S. Tilles, Esq.  
Meyer, Faller, Weisman and  
Rosenberg, PC  
4400 Jenifer Street, N.W.  
Suite 380  
Washington, D.C. 20015

James D. Ellis, Esq.  
Paula J. Fulks, Esq.  
Southwestern Bell Corporation  
175 E. Houston, Room 1156  
San Antonio, TX 78205

John I. Davis, Esq.  
Donna C. Gregg, Esq.  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Lon C. Levin, Esq.  
AMSC Subsidiary Corporation  
10802 Park Ridge Boulevard  
Reston, VA, 22091

Thomas A. Stroup, Esq.  
Mark J. Golden, Esq.  
The Personal Communications Industry  
Association  
1019 19th Street N.W. Suite 1100  
Washington, D.C. 20036

Marilyn Mohrman-Gillis, Esq.  
Lonna M. Thompson, Esq.  
Assoc. of America's Public Television  
Stations  
1350 Connecticut Ave., N.W.  
Suite 200  
Washington, D.C. 20036

David M. Hunsaker, Esq.  
Denise B. Moline, Esq.  
Putbrese & Hunsaker  
6800 Fleetwood Road, Suite 100  
P.O. Box 539  
McLean, VA 22101-0539

Mr. Kevin C. Gallagher  
Vice President - Legal/External  
Affairs and Assistant Secretary  
Centel Cellular Company  
8725 West Higgins Road  
Chicago, IL 60631

Joe D. Edge, Esq.  
Hopkins & Sutter  
888 16th Street, N.W.  
Washington, D.C. 20006

Joanne Salvatore Bochis, Esq.  
National Exchange Carrier  
Association, Inc.  
100 South Jefferson Road  
Whippany, New Jersey 07981

Andre J. Lachance, Esq.  
GTE Service Corporation  
1850 M St., N.W., Suite 1200  
Washington, D.C. 20036

Henry L. Baumann, Esq.  
Jack N. Goodman, Esq.  
NAB  
1771 N Street, N.W.  
Washington, D.C. 20036

Mark C. Rosenblum, Esq.  
Robert J. McKee, Esq.  
Roy E. Hoffinger, Esq.  
AT&T  
295 N. Maple Avenue, Room 2255F2  
Basking Ridge, NJ 07920

Bruce D. Jacobs, Esq.  
Glenn S. Richards, Esq.  
Lauren S. Drake, Esq.  
Fisher, Wayland, Cooper & Leader  
2001 Pennsylvania Ave., N.W.  
Suite 400  
Washington, D.C. 20006

Paul Glist, Esq.  
Matthew P. Zinn, Esq.  
Cole, Raywid & Braverman  
1919 Pennsylvania Ave., N.W.  
Suite 200  
Washington, D.C. 20006

Mr. Donald F. Evans  
Director, Regulatory Affairs  
MCI  
1801 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

Mr. Stephen R. Effros, President  
Mr. James H. Ewalt, EVP  
Robert J. Unger, Esq.  
CATA, Inc.  
P.O. Box 1005  
3950 Chain Bridge Road  
Fairfax, VA 22030

Edward D. Young, III, Esq.  
Lawrence W. Katz, Esq.  
Bell Atlantic  
1710 H Street N.W.  
Washington, D.C. 20006

William S. Reyner, Jr., Esq.  
Michelle M. Shanahan, Esq.  
Hogan & Hartson L.L.P.  
555 13th Street, N.W.  
Washington, D.C. 20004

Mr. Philip V. Otero  
Mr. Alexander P. Humphrey  
GE American Communications, Inc.  
1299 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Frank M. Panek, Esq.  
Ameritech Operating Companies  
2000 West Ameritech Center Drive  
Room 4H84  
Hoffman Estates, IL 60196-1025

Jay C. Keithley, Esq.  
Leon M. Kestenbaum, Esq.  
Sprint Corporation  
1850 M Street, N.W., Suite 1110  
Washington, D.C. 20036



Michael F. Altschul, Esq.  
Cellular Telecommunications  
Industry Association  
1250 Connecticut Ave., N.W., Suite  
200  
Washington, D.C. 20036

M. Robert Sutherland, Esq.  
Richard M. Sbaratta, Esq.  
Rebecca M. Lough, Esq.  
BellSouth Telecommunications, Inc.  
4300 Southern Bell Center  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

Edward R. Wholl, Esq.  
Jacqueline E. Holmes Nethersole, Esq.  
NYNEX Telephone Companies  
120 Bloomingdale Road  
White Plains, NY 10605

Robert F. Corazzini, Esq.  
Pepper & Corazzini  
200 Montgomery Building  
1776 K Street, N.W., Suite 200  
Washington, D.C. 20006

Jeffrey L. Sheldon, Esq.  
Thomas E. Goode, Esq.  
Utilities Telecommunications Council  
1140 Connecticut Avenue, N.W.  
Suite 1140  
Washington, D.C. 20036

Mr. Robert J. Sachs  
Senior Vice President for  
Corporate and Legal Affairs  
Margaret A. Sofio, Esq.  
Continental Cablevision, Inc.  
Pilot House, Lewis Wharf  
Boston, MA 02110

Rodney L. Joyce, Esq.  
Ginsburg, Feldman & Bress,  
Chartered  
1250 Connecticut Ave., N.W.  
Washington, D.C. 20036

J. Scott Nicholls, Manager  
Regulatory Affairs  
Allnet Communication Services, Inc.  
1990 M Street, N.W., Suite 500  
Washington, D.C. 20036

Robert M. Lynch, Esq.  
Richard C. Hartgrove, Esq.  
Robert J. Gryzmala, Esq.  
Southwestern Bell Tel. Company  
One Bell Center, Room 3520  
St. Louis, Missouri 63101

Mr. Mark E. Crosby, President &  
Managing Director  
Frederick J. Day, Esq.  
Industrial Telecommunications  
Association, Inc.  
1110 N. Glebe Road, Suite 500  
Arlington, Virginia 22201-5720

Stephen L. Goodman, Esq.  
Halprin, Temple & Goodman  
1100 New York Ave., N.W.  
Suite 650 East Tower  
Washington, D.C. 20005

Tom W. Davidson, Esq.  
Akin, Gump, Strauss, Hauer  
and Feld, L.L.P.  
1333 New Hampshire Ave., N.W.  
Suite 400  
Washington, D.C. 20036

Daniel L. Brenner, Esq.  
Neal M. Goldberg, Esq.  
Diane B. Burstein, Esq.  
NCTA  
1724 Massachusetts Ave., N.W.  
Washington, D.C. 20036

Mr. William J. Gordon  
V.P. Regulatory Affairs  
In-Flight Phone Corp.  
1146 19th Street, N.W., Suite 200  
Washington, D.C. 20036

Richard R. Zaragoza, Esq.  
David D. Oxenford, Esq.  
Francisco R. Montero, Esq.  
John M. Burgett, Esq.  
Fisher, Wayland, Cooper & Leader  
2001 Penn., Ave., N.W., Suite 400  
Washington, D.C. 20006

Joseph A. Godles, Esq.  
Jonathan L. Wiener, Esq.  
Goldberg, Godles, Wiener & Wright  
1229 19th Street, N.W.  
Washington, D.C. 20036

Doris S. Freedman, Esq.  
Barry Pineless, Esq.  
United States Small Business  
Administration  
409 3rd Street, S.W.  
Washington, D.C. 20416

Christopher D. Imlay, Esq.  
Booth, Freret & Imlay  
1233 20th Street, N.W.  
Suite 204  
Washington, D.C. 20036

Dennis C. Brown, Esq.  
Robert H. Schwaninger, Jr., Esq.  
Brown & Schwaninger  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006

\*Mr. Roy A. Sheppard  
President/Owner  
Cable Services  
308-2nd Street, N.W.  
Box 608  
Jamestown, ND 58402-0608

Ms. Melissa K. Bailey  
Associate Director  
Aircraft Owners & Pilots  
Association  
421 Aviation Way  
Frederick, MD 21701-4798

Joseph A. Godles, Esq.  
Mary J. Dent, Esq.  
Goldberg, Godles, Wiener & Wright  
1229 19th Street, N.W.  
Washington, D.C. 20036

Martin W. Bercovici, Esq.  
Keller and Heckman  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001

Thomas J. Keller, Esq.  
Michael S. Wroblewski, Esq.  
Verner, Liipfert, Bernhard, McPherson  
and Hand, Chartered  
901 15th Street, N.W., Suite 700  
Washington, D.C. 20005

Mr. Dane E. Ericksen, P.E.  
Christopher D. Imlay, Esq.  
Booth, Freret & Imlay  
1233 20th Street, N.W.  
Suite 204  
Washington, D.C. 20036

Thomas J. Casey, Esq.  
Jay L. Birnbaum, Esq.  
David H. Pawlik, Esq.  
Skadden, Arps, Slate,  
Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, D.C. 20005

Mr. Patrick Delaney  
WKBH AM/FM-WQJY-KKRF-KGRA  
P.O. Box 1624  
LaCrosse WI 54602-1624

Mr. Robert Weisberg  
Mountain Cablevision  
145 East 92 Street  
New York, NY 10128

**Vary Hluchan**  
DJ, KZSU Stanford  
130 22nd Avenue  
San Mateo, CA 94403

**Michael Couzens, Esq.**  
Fireweed Communications Corp.  
P.O. Box No. 33127  
Washington, D.C. 20554

**W.T. Adams, President**  
Radio Technical Commission for  
Maritime Services  
P.O. Box 19087  
Washington, D.C. 20036

**Robert A. Mansbach, Esq.**  
COMSAT General Corporation  
6560 Rock Spring Drive  
Bethesda, MD 20817

**Mr. Harvey M. Budd**  
Budd Broadcasting Co., Inc.  
930 NW 8th Avenue  
Gainesville, FL 32601

**Mr. Ed De La Hunt, President**  
De La Hunt Broadcasting Corp.  
P.O. Box 49  
Park Rapids, MN 56470

**Mr. Steve Bracco**  
Station Manager  
WGN Victory 88  
Wisconsin's Good News Voice  
P.O. Box 88  
Milladore, WI 54454

**Edward W. Hummers, Jr., Esq.**  
Paul J. Feldman, Esq.  
Nationwide Communications Inc.  
1300 North 17th Street  
11th Floor  
Rosslyn, VA 22209

**Ms. Mary M. Mann**  
National Marine Manufacturers Assoc.  
3050 K Street, N.W., Suite 145  
Washington, D.C. 20007

**Mr. James R. Rand, Exec. Dir.**  
John D. Lane, Esq.  
Robert M. Gurss, Esq.  
Wilkes, Artis, Hedrick & Lane,  
Chartered  
1666 K Street, N.W., Suite 1100  
Washington, D.C. 20006

**Mr. James R. Balkcom, Jr.**  
President & CEO  
Techsonic Industries, Inc.  
Five Humminbird Lane  
Eufaula Alabama 36027

**John F. Garziglia, Esq.**  
Pepper & Corazzini  
1776 K Street, N.W.  
Suite 200  
Washington, D.C. 20006

**Mr. John H. Schmidt, P.E.**  
Technical Director  
WBAU Radio  
Adelphi University Center  
Garden City, NY 11530

**J. D. Hersey, Chief**  
Spectrum Management & Radio  
Regulatory Branch  
J. W. Kime, Admiral  
U. S. Coast Guard  
2100 Second Street, SW  
Washington, D.C. 20593-0001

Mr. Peter J. Chenery  
Past Vice Commander and  
Delegate to the RTCM  
United States Power Squadrons  
P.O. Box 30423  
Raleigh, NC 27622

Mr. Gene Kirchner  
General Manager  
WRDN AM and FM  
Durand, WI 54736

Mr. James H. Baker  
Executive Vice President  
Forest Industries Telecommunications  
871 Country Club Road, Suite A  
Eugene, OR 97401-2200

Eric E. Breisach, Esq.  
Howard & Howard  
107 W. Michigan Avenue  
Suite 400  
Kalamazoo, MI 49007